



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HONGJIE CAO and GARY T. MARTINO

Application No. 09/873,505

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on December 28, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the application indicates that the following headings are missing from the Appeal Brief of July 22, 2005:

- 1) "Evidence appendix", as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix", as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute brief that is in compliance with 37 CFR § 41.37(c) is required.

A Reply Brief was timely filed on December 7, 2005. The examiner did not review this paper. The Reply Brief needs to be considered by the examiner with respect to compliance with the criteria set forth in 37 CFR § 41.43(a) which states:

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The following prior art reference cited on page 3 of the March 24, 2004 Examiner's Answer was not located in the Image File Wrapper (IFW):

Ashley, L. "Sunburn and Sunscreen Preparations," Poucher's Perfumes, Cosmetics and Soaps, 1993, Chapman & Hall, (9th ed. Hilda Butler), vol. 3, pp. 431-437.

The above listed reference is needed to process the appeal properly

Accordingly it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of July 22, 2005 defective;
- 2) for applicant to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for the examiner to consider the substitute Appeal Brief, and, if necessary, vacate the Examiner's Answer mailed

October 7, 2005, and issue a new Examiner's Answer in accordance with the new rules;

4) consider the Reply Brief of December 7, 2005;

5) have the above listed reference scanned into the IFW;

and

6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

CRAIG R. FEINBERG
Program and Resource Administrator
(571) 272-9797

CRF/eld

Thomas F. Roland
National Starch and Chemical company
10 Finderne Avenue
Bridgewater, NJ 08807-0500